

REMARKS

Claims 1, 4-8, and 10-12 remain in the application. Claim 1 has been amended to include the limitations of canceled claims 2-3. Claim 8 has been amended to include the limitations of canceled claim 9. Claim 10 has been amended to maintain proper dependency. Claims 1, 5-8, 10, and 11 have been amended to clarify that each strap engages upper and lower gun swivels. Claim 12 has been amended to take the form of a method claim. No new matter has been added.

Interview Summary Under 37 CFR 1.133(b)

Applicant gratefully acknowledges the courtesy of Examiners Larson and Newhouse in granting a telephonic interview with Applicant's representative, Christopher Kilner, on January 9, 2007. During the interview, it was agreed that the proposed redrafting of claim 12 as a method claim, a presently amended herein, would overcome the 102 rejection based upon Gomez et al.

The safety issues related to guns, which differentiate the needs of gun slings relative to other carrying straps such as the golf bag strap of Mayers, were discussed by Applicant's representative and brought to the attention of the Examiners.

Further, in relation to the cited prior art to Martinez and Mayers, the issue of how and where straps are attached was discussed. The Examiners suggested clarifying the claim language to specify that each end of each of the claimed straps attach to respective upper and lower gun swivels (as opposed to one strap possibly attaching to another, as disclosed in Martinez) in order to distinguish the claims from the prior art.

No agreement was reached with respect to overall allowance of the claims and the Examiners indicated that the amended claims would be subject to further search and consideration.

Claim Rejections - 35 USC 112

Claims 8-12 were rejected for indefiniteness due to the term "said first strap" lacking proper antecedent basis. The present amendment corrects this issue by amending the first occurrence of "a single strap" to --a first strap--. Applicant requests reconsideration and withdrawal of the rejection based upon the amendments.

Claim Rejections - 35 USC 102

Claim 12 was rejected as being anticipated by the snowboarding strap of Gomez et al. By the present amendment, Applicant has reformatted claim 12 as a method of using a Y-strap so as to claim the intended use with gun slings. Gomez et al. lacks any disclosure of using a Y-strap to allow use of two gun slings with a single gun and thus cannot anticipate amended claim 12. Applicant requests reconsideration and withdrawal of the rejection based upon the amendments.

Claim Rejections - 35 USC 103

Claims 1-4

Claims 1-4 were rejected as being obvious over Martinez. Applicant respectfully traverses this rejection. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (See M.P.E.P. Section 2143).

No Motivation to Combine (or Modify)

In the present case of the rejection of claims 1-4, the Office Action has failed to meet at least two of these criteria. First, there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify Martinez in the manner suggested.

Martinez, as a whole, teaches that a first strap 14 is adjustable (using buckle 21) and that a fixed-length auxiliary sling strap assembly 23 is adjusted to form neck encircling loop 29 by selectively securing a snap female end 27 to one of a number of spaced apart male snaps ends 25 on first strap 14 (see col. 3:1-11). The principal of operation involves securing a fixed-length strap at different locations along a primary strap to alter the opening formed between the straps. The fixed length of the auxiliary strap allows it to be stowed flat and the snap assembly allows “easy, fast, release ... when needed to avoid harmful entanglements in emergency situations” (col. 3:23-24). As such, any modification to make the fixed-length strap assembly 23 adjustable in length would change its principle of operation and make it unsuited for its intended purpose of

quickly stowing flat, thus being an improper modification for at least two reasons under M.P.E.P. 2143.01.

More specifically, M.P.E.P. 2143.01 states that if a “proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).” In the present case, an explicit purpose of the fixed-length strap in Martinez is to allow it to be “stored out of the way flatly against the main sling when not in use” (Abstract) by attachment to the lowermost one of the attachment means 25. If the strap 23 were made adjustable in length, this functionality would be lost.

Furthermore, M.P.E.P. 2143.01 states that if “the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).” In the present case, the loop opening 29 in Martinez is adjusted by selectively changing its lower attachment point. This principle of operation would be impermissibly altered if the strap 23 were modified to include length adjustment means.

All Claim Limitations Not Shown

The teachings of Martinez are also insufficient to establish *prima facie* obviousness since the prior art fails to teach or suggest all the claim limitations. The present claims include limitations to attachment means on an upper padded portion of each strap which is not taught or suggested by Martinez, which teaches snaps 25 at a lower, unpadded end of the primary strap 14.

Furthermore, as suggested by the Examiner, the claims have been amended to clarify that each strap engages upper and lower gun supports. Martinez fails to disclose or fairly suggest this limitation, instead teaching that upper and lower portions of auxiliary strap 23 attach to primary strap 14.

Dependent Claims

In regard to the basis for the rejection of claim 2 in the Office Action (the limitations of which are now incorporated into claim 1), Applicant respectfully notes that regardless of whether or not it is old and well known to provide padding on both shoulder straps, the alleged teaching

is misplaced since Martinez does not teach the use of two shoulder straps and appears to instead teach that only one padded shoulder strap is needed. Indeed, Martinez teaches the use of a shoulder strap and a neck loop that assists in keeping the shoulder strap in place *at the side of the wearer*. The neck loop is not meant for supporting the weight of the gun, but merely for retaining the primary loop on the shoulder of the wearer. Since Martinez is the only prior art that teaches a neck loop and fails to suggest the need or desirability of any padding on such neck loops (and instead appears to teach that no padding is required for such neck loops), the prior art lacks any teaching or suggestion to provide pads for such loops.

In regard to claim 3 (the limitations of which are now incorporated into claim 1), the Office action cites to *In re Japiske* for the proposition that it would have been obvious to relocate the attachment means from a lower portion of the strap to the upper padded portion. This argument fails on two grounds. First, the attachment means (snaps 25) that the Examiner suggests relocating are integral to the sizing of neck loop 19 and must be at a lower end for the device of Martinez to operate. Secondly, the caselaw of *In re Japiske* does not stand for the proposition that relocation of attachment means for straps is obvious; nor does it stand for the proposition that relocation of elements generally is *per se* obvious. Instead, the court in *In re Japiske* found that claims to a hydraulic power press which read on the prior art except with regard to the position of the starting switch were unpatentable *because shifting the position of the starting switch would not have modified the operation of the device*. In the present case, shifting the position of the attachment means *does* have an effect on the operation of the device and therefore the caselaw of *In re Japiske* is inapplicable.

Claims 1-11

Claims 1-11 were rejected as being obvious over Mayers in view of Bell et al. and Rosenfield and further in view of Gomez et al. as applied to claim 12.

As an initial matter, Applicant respectfully submits that the arts of guns, golf bags, and snowboards are diverse and that the straps for each of these devices have markedly different needs and requirements. For example, snowboard straps are typically for purposes of retention, not support, and have a different utility and mode of operation in comparison to carrying straps. The support strap of Gomez et al. is for the specific purpose of supporting a snowboard while a user rides a chairlift and is specific to that orientation. Similarly, golf bag straps need to support

the greater weight of a plurality of golf clubs and associated equipment and have only minimal orientation requirements, i.e., to not dump out the bag contents, and preferably include orientations in which the bag is at an angle to keep the clubs from shifting position and would “point” at adjacent players, as shown in figure 5 of Mayers. Gun slings, however, have a safety component associated with orientation. The safest position for transporting a rifle is in a vertical position so that people adjacent the person transporting the rifle will not be injured or killed by an accidental discharge of the weapon. In view of these differences, Applicant submits that Mayers and Gomez et al. are non-analogous art.

Mayers is drawn to a convertible golf bag strap that consists of layers 12 and 14 that snap together at both ends with snaps 18 and 26. Each layer 12, 14 is attached to an end of belt 32 at one end and to a coupler 25/buckle 22 at the other. A buckle 34 on belt 32 allows the belt to be secured to the bag in different orientations, i.e., looped though lower bag support 46 in a single shoulder embodiment and looped through both upper and lower bag supports 48 and 46 when in a two shoulder embodiment.

In addition to lacking explicit mention of padding, Mayers admittedly fails to disclose the use of a Y-strap at a lower end thereof and teaches a tilted carrying arrangement unsuited for the safe transport of firearms. Any modification of Mayers to substitute a Y-strap for the belt 32 would impermissibly change the principal of operation since a Y-strap could only provide attachment to a single bag support for a single shoulder embodiment and make the invention of Mayers unsuitable for its intended purpose of also providing a two shoulder embodiment with the bag at an inclined angle.

Bell et al. is cited for the proposition that it is known that a shoulder strap can be padded and used for firearms and golf bags. While this may be true, as previously submitted, the transport of guns should be limited to vertical positions, which is what makes a single-shoulder strap an ideal candidate. As such, while a single shoulder strap may be suitable for both guns and golf bags, it is not true that golf bag straps generally (i.e., all golf bag carrying straps) are suitable for safely transporting guns and one of ordinary skill in the art of firearms would have clearly viewed the inclined carrying arrangement of Mayers as unsuitable for the safe transport of firearms and would not have looked to its teachings as being useful for gun slings due to these safety issues.

In view of the above-mentioned reasons, Applicant respectfully submits that Office action has failed to present a *prima facie* case of obviousness since one of ordinary skill in the art of firearms would recognize the golf bag straps of Mayers to be unsuitable for the safe transport of a rifle and that the combination of Mayers and Gomez et al. is improper since the replacement of belt 32 in Mayers with a Y-strap would impermissibly change the principal of operation and make the strap of Mayers unsuited for its intended purpose of convertible use.

In view of the above arguments, Applicant respectfully submits that claims 1, 4-8, and 10-12 are novel and non-obvious over the cited prior art.

Conclusion

For the reasons cited above, Applicants submit that claims 1, 4-8, and 10-12 are in condition for allowance and requests reconsideration of the application. If there remain any issues that may be disposed of via a telephonic interview, the Examiner is kindly invited to contact the undersigned at the local exchange given below.

Respectfully submitted,



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